S.B. Criminal Revision Petition NO.31/2006
(Smt. Manju & Ors. Vs. State & Ors.)

Date of order : 18.5.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vijay Purohit, for the petitioners.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. Talat Bari, for the non-petitioner No.2.

By way of filing the present revision petition, the petitioners have challenged the order impugned dated 12.11.2005 passed by Chief Judicial Magistrate, Jalore in Criminal Original Case No.209/2004 whereby the application filed by State under Section 319 Cr.P.C. was allowed and cognizance was taken against the petitioners for offence under Sections 447, 323 and 324/34 I.P.C.

According to the facts of the case, a FIR was filed by non-petitioner No.2 before Police Station Jalore on 20.6.2004 wherein four persons were named for committing offence under Section 447, 323 and 324/34 I.P.C. It was alleged in the FIR that on 20.6.2004 when the complainant's wife and his daughter were putting 'channa' at proper place in their field, at that time, Rana Ram, his wife, his son - Surja Ram and Smt. Manju wife of Pata Ram entered in their field and assaulted her wife and thereafter, all these persons ran away from the field. At that time, Bagda

Ram, Mohan Lal and some other persons intervened and protected her wife. This incident was informed to the complainant by his wife and he came back in the evening and registered FIR.

After reregistration of FIR, the investigation was commenced and after completion of investigation, challan was failed against accused persons namely Rana Ram and Surja Ram and in the investigation on the basis of evidence collected by the Police, the petitioners were not found to be indulged in the incident. After filing challan, trial commenced and statement of two witnesses namely PW-1 Bagda Ram and PW-2 Mohan Lal were recorded by the trial court and on the basis of their statements, cognizance has been taken in this case vide impugned order.

It is contended by the learned counsel for the petitioners that the petitioners have challenged the validity of the impugned order on the ground that in the statement recorded by the police under Section 161 Cr.P.C., specific allegation was made by both the witnesses that petitioners were not involved in the incident. When such specific statement was recorded before the Police, now both the witnesses are changing their version before the court, therefore, obviously, they are stating the facts which were denied by them in the investigation. It is also contended that upon

perusal of the statement of PW-1 Bagda Ram and PW-2 Mohan Lal, there is no specific allegation for inflicting any injury by the present petitioners. Learned counsel for the petitioners has contended that when no specific allegation is levelled against the petitioners in the investigation and both these prosecution witnesses denied the involvement of the petitioners, then, it is obvious that now in the court they are falsely implicating both the petitioners. Further, it is contended that power under Section 319 Cr.P.C. is required to be exercised sparingly and at the time of passing such order upon application under Section 319 Cr.P.C., the trial court is required to scan the evidence whether there is possibility of conviction, if not, then in view of the judgment rendered by Hon'ble Supreme Court in case of Michael Machano & Anr. Vs. Central Bureau of Investigation & Anr., reported in 2000 (3) SCC 262, no cognizance was to be taken against the petitioners because in this case, there is no material upon which it can be said that ultimately there is possibility of conviction.

In this view of the matter, in my opinion, learned trial court has committed an error while taking cognizance against the petitioners on application under Section 319 Cr.P.C. because both the witnesses namely PW-1 Bagda Ram and PW-2 Mohan Lal improved their statement and falsely implicating both the petitioners because before the investigating Officer

at the time of recording statement under Section 161 Cr.P.C., a specific statement was made by both the witnesses that the petitioners were not involved in the alleged incident.

In view of the judgment rendered by Hon'ble Apex Court in case of Michael Machano & Anr. Vs. Central Bureau of Investigation & Anr., reported in 2000 (3) SCC 262, the revision petition is allowed and the order impugned dated 12.11.2005 passed by Chief Judicial Magistrate, Jalore is set aside.

(GOPAL KRISHAN VYAS), J .

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